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TAXATION—PROPERTY SUBJECT TO TAXATION—PERSONAL PROPERTY OUTSIDE OF STATE—PEOPLE EX REL. A. G. HYDE & SONS V. O'DONNELL ET AL TAX COM'RS, 101 N. Y. SUP. 610.—*Held*, that under Laws 1896 p. 795 c. 908, making personal property situated or owned within the state subject to taxation, property of a domestic corporation which was without the state, was not taxable, though such property was generally brought into the state to be sold. *Clarke & Scott, J. J., dissenting.*

The general rule is that the domicile of the owner determine the *situs* of personal property for taxation purposes. *Morgan County v. Walton County*, 121 Ga. 659; *Herron v. Keeron*, 59 Ind. 472; *Sagamon & M. R. Co. v. Morgan County*, 14 Ill. 164. The legislature may change this rule at will. *City of Winston v. Salem*, 131 N. C. 404, *City of Baltimore v. Safe Deposit & Trust Co.*, 97 Md. 659. The place of taxation has been limited to the permanent *situs* of tangible personalty. *Delaware L. & W. R. Co. v. Pennsylvania*, 198 U. S. 341. *People ex. rel. Hoyt v. Tax & A. Comrs.* 23 N. Y. 224. Against the main case, it is held that the mere absence of a resident's personalty from the state does not affect its *situs*. *People v. Barker*, 83 N. Y. Sup. 33; to change which, a permanent location outside of the state is necessary. *People ex. rel. P. M. S. Co. v. Coms. of Taxes*, 64 N. Y. 541.

TELEGRAPH—FAILURE TO DELIVER A MESSAGE—PRESUMPTION OF NEGLIGENCE—BURDEN. SHEPARD VS. WESTERN UNION TELEGRAPH CO., 55 S. E. 704—*Held*, Though negligence of a telegraph company will be presumed from a week's delay in delivering a message, the presumption may be rebutted, and it is not necessary that the rebutting evidence preponderate, the burden being on the plaintiff to show negligence.

Where there is an unquestionable delay in the transmission of a message, the burden of explaining the delay is on the telegraph company, *Julian v. Western Union Telegraph Co.*, 98 Ind. 327; *Telegraph Co. v. Griswold*, 37 Ohio State 301. The telegraph company must exonerate itself by showing how the delay occurred, and in absence of such proof, the jury will be authorized to presume a want of ordinary care and negligence on the part of the company. *Rittenhouse v. The Independent Line of Telegraph*, 44 N. Y. 263; *Tyler v. Western Union Telegraph Co.*, 14 A. R. 33. When a telegram is not delivered until more than three days have elapsed after its receipt, the burden is on the company to explain the delay. *Harkness v. Western Union Telegraph Co.*, 73 Iowa 190; *Sweetland v. Telegraph Co.*, 27 Iowa 433.

TELEGRAPHS AND TELEPHONES—NEGLIGENCE—ACTION—PETITION—SUFFICIENCY—WESTERN UNION TELEGRAPH CO. V. ROWE ET AL 98 S. W. 228 (TEX.). *Held*, where in an action against a telegraph company for delay in transmitting a message, the petition alleges facts sufficient to show a contract to submit and deliver a message, though it does not allege a contract was made.

It has been held that a person to whom a telegram is addressed may maintain an action for the failure to forward and deliver promptly, on proof that the sender acted as his agent and that the telegraph company knew of the fact. *Western Union Telegraph v. Wilson*, 93 Ala. 32; 30 Am. St. Rep. 23. But if the complaint shows that the defendant, who was engaged by the plaintiff undertook to transmit the message, the mutual obligation of the parties is sufficient to maintain the action, although it was not alleged that anything was paid for the message. *Western Union Telegraph v. Meech*, 49 Ind. 53. Damages, which are recoverable are direct damages, resulting

from a breach of contract, which the parties to the contract would have contemplated as flowing from its breach, if at the time they were fully informed of the facts. *Western Union Telegraph Co. v. Pells*, 8 Ky. Law Rep. 531. Whether it is sufficient to maintain an action against a telegraph company, which undertook to transmit a message, without alleging that delivery was within office hours, see *Western Union Telegraph Co. v. Jump*, 2 Wilson Civ. Cases, Ct. Appeals, Article 41. But a petition in an action against a telegraph company for failure to deliver a message which alleges that the message was given to defendant's agent by telephone, and a contract made to send it, and that it was the custom of defendant's employees, known to defendant, to receive such messages by telephone is not bad for want of an averment that the message was in writing, *Texas Telegraph and Telephone Co. v. Seiders*, 29 S. W. 258; 9 Tex. Civ. App. Article 431.

WITNESSES—LEADING QUESTIONS.—*STATE V. WATERS*, 109 N. W. 1013 (IA.). *Held*, that, where on a prosecution for statutory rape, prosecutrix was reticent in giving her testimony, leading questions were proper.

The general rule is that leading questions are not allowed in the direct examination; *U. S. v. Dickinson*, 2 McLean 331; *Greenleaf on Evidence*, §434; *Wigmore on Evidence*, 769; unless the witness is hostile. *Bradshaw v. Combs*, 102 Ill. 428. And leading questions are allowed if the witness is biased, *Stratford v. Sanford*, 9 Conn. 283, or is unwilling, *State v. Benner*, 64 Me. 279, or weak minded, *Armstead v. State*, 22 Tex. App. 59, or surprised the examining attorney with his answers, *St. Clair v. U. S.*, 154 U. S. 150. At the discretion of the trial judge a full disclosure of witness' knowledge may be elicited. *Towns v. Alvord*, 2 Ala. 380. *Brassell v. State*, 91 Ala. 45, is directly in harmony.